

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 16.11.2017

Delivered on : 18.01.2018

CORAM

THE HONOURABLE THIRU JUSTICE **V. PARTHIBAN**

W.P.No.19953 of 2009 &
MP No.2 of 2010

R.Sugitha

..

Petitioner

versus

1. The Deputy General Manager,
Tamil Nadu State LPG Incharge,
IOCL Bhavan,
No.139, Mahatma Gandhi Road,
Nungambakkam,
Madras-600 034.

2. The Senior Manager, IOCL,
Marketing Division,
Indane Area Office,
Triveni, 2nd Floor,
B-35, Shastri Road,
Thillai Nagar,
Trichy-620 018.

3. R.Umarani

4. M.Sathiyapriya

..

Respondents

Prayer: This Writ Petition has been filed under Article 226 of the

Constitution of India, seeking to issue Writ of Certiorari, to call for the records pertaining to the list of empanelled candidates published on 22.9.2009 on the file of the 2nd respondent, quash it as illegal, incompetent and without jurisdiction.

For Petitioner : Mr. V.Raghavachari for
Mr.Ma.P.Thangavel

For Respondents : Mr.R.Thiagarajan, SC for
M/s.S.Raveekumar for R3
Mr.M.Rajasekar for R4

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Certiorari, to call for the records pertaining to the list of empanelled candidates published on 22.9.2009 on the file of the 2nd respondent, quash it as illegal, incompetent and without jurisdiction.

2. The first respondent, Indian Oil Corporation Limited [hereinafter referred to as 'IOCL'] issued a notification on 06.02.2008 calling for applications from the Candidates for the purpose of allotting distributorship of Liquefied Petroleum Gas (LPG) for Kallakurichi Region, Villupuram District against the

quota reserved for 'Women'. The petitioner along with others had applied for consideration of grant of distributorship as notified. The IOCL had provided an elaborate Brochure for consideration of candidates by appointing a Sub Committee at various levels for scrutinizing and filtering the applications. The petitioner along with others was subjected to the detail process of selection and she was empanelled along with other candidates on 19.05.2009. The candidates were given ranking on the basis of the marks obtained by them under various heads as mentioned below:

Parameter	Maximum Marks
a. Capability to provide infrastructure	35 Marks
b. Capability to provide finance	35 Marks
c. Educational Qualification	15 Marks
d. Age	4 Marks
e. Experience	4 Marks
f. Business ability / acumen	5 Marks
g. Personality	2 Marks
Total Marks	100 Marks

2. As per the ranking published as above, the petitioner was ranked No.1 having secured 89.23 marks out of 100 marks. Thereafter, a field verification was conducted on 04.07.2009. However, eventually, no allotment was made to the petitioner despite she was ranked No.1 in the selected panel of candidates. While so, the second respondent published a second list of empanelled candidates on 22.09.2009 notifying that the third respondent was eligible candidate with higher marks, i.e. 95 out of 100. On verification, the petitioner had come to know that against the original notification of the result dated 19.06.2009, the third respondent was representing that the Sub Committee had failed to evaluate her application properly and certain marks were not allotted in spite of her eligibility. The third respondent's contention was that under the head 'capability to provide finance', the total marks allotted for the said category was '7' and the third respondent was not granted any marks against the said category. Therefore, she was assigned rank No.3 having secured 88.00 marks out of 100 marks. On the basis of the representation of the third respondent, it appears that later 7 marks against the above said category, 'capability to provide finance', were added

to the third respondent and she was declared to have secured 95 marks out of 100 and accordingly, she was ultimately awarded the distributorship. Challenging the second list of empanelled candidates dated 22.09.2009 insofar as the third respondent is concerned, the petitioner is before this Court.

3. The writ petition was admitted and *status-quo* was ordered. Thereafter, the said interim order was modified on 22.12.2009 in M.P.No.2 of 2009 by this Court, making it clear that any dealership granted to the third respondent herein shall be subject to the result of the writ petition.

4. Upon notice, Mr.P.N.Radhakrishnan, learned counsel entered appearance for respondents 1 and 2 and Mr.S.Raveekumar, learned counsel entered appearance for respondent No.3 and Mr.M.Rajasekar, learned counsel entered appearance for respondent No.4.

5. During pendency of the writ petition, the fourth respondent came to be impleaded as per order dated

09.12.2015. The impleaded fourth respondent was ranked as No.3 in the empanelled list below the third respondent and the petitioner herein.

6. Sri V.Raghavachari, learned counsel appearing for the petitioner, at the outset, would submit that the entire Brochure adopted by the IOCL in granting distributorship to the third respondent has been vitiated for more than one reason. Firstly, he would point out the fact that as per the Brochure issued by the IOCL, Clause 23 deals with the candidates who furnishes false information. The said Clause reads as under:

"23.FURNISHING OF FALSE INFORMATION

If any information furnished by the applicant is found to be false at any point of time before or after appointment as a dealer, the allotment will be cancelled forthwith and distributorship terminated in case commissioned."

7. Secondly, the learned counsel would point out that as per instructions in the Form to be submitted for consideration for allotting distributorship, marks will be given on the basis of the

information given in the application in terms of Clause 16 of the Form and in the same Form in Clause 17, an undertaking was also required to be given by the candidates that any wrong information/misrepresentation/suppression of facts will make the candidates ineligible for the LPG distributorship. Along with the Form, such undertaking had also to be given by way of an affidavit notarized by a Notary Public. Thirdly, the learned counsel would submit that in the application form under Clause 4.5, it is mentioned that how much amount, the applicant was capable of investing on the basis of a certificate issued by any bank or financial institution and in case no amount is mentioned then the same shall be taken as 'Nil' and no marks would be awarded.

8. According to the learned counsel for the petitioner, the third respondent as regards, the first contention, had originally represented that she had experience which later was found to be false by the IOCL itself. He would further contend that the third respondent, who was not initially empanelled as No.1 rank holder, had approached this Court by filing a writ petition in

W.P.No.13550 of 2009. In response to the writ petition filed by the third respondent, a counter affidavit was filed by the IOCL, in which, it was clearly mentioned that the claim of the third respondent herein who was the petitioner therein that she had experience as Marketing Manager was false. He would particularly draw the attention of this Court to para-6 of the counter affidavit filed by the IOCL resisting the claim of the petitioner therein, who was the third respondent herein, which reads as under:

"6. As regards the averments contained in para 4 of the Affidavit are concerned, the averments regarding the announcements of the results on 18.06.2009 itself, the marks awarded to the successful candidate and the petitioner and the representation sent by the Petitioner are all true. As a matter of practice and in accordance with the Guidelines as aforesaid, the results of the interview will be published on the Notice Board available and in the internet immediately. However, it is not true to state that the representation has not been

considered by the Respondents. It is however relevant and significant to point out here that in the Application dated 10.03.2008 submitted by the Petitioner, again item No.14.5--"Details of loan which can be obtained from Scheduled Bank/Financial Institutions based on bankers/Financial Institution Certificate to extent loan as per Annexure D", it has been mentioned as NIL by the Petitioner in the amount Column. The claim of the Petitioner that she has been working as Marketing Manager is denied as false. It can be seen from the letter dated NIL issued by Shanthi Agencies, Kallakurichi attached by the Petitioner along with her Application for selection that she has been working as Senior Executive from 2000 onwards, and hence her claim of working as Marketing Manager is false. The Petitioner's claim of 15 years experience is also no true, since the above said letter clearly states that she was employed from 2000, which as on the date of the Application would submit to only 8 years and not 15 years as alleged. The fact that the Petitioner is a Doctor by

profession raises doubts about her working as a Marketing Manager, since a practicing Doctor cannot be functioning also as a Marketing Manager in a Firm. Considering the merits and de-merits of the complaint submitted by the Petitioner and the investigating officers recommendation, the competent authority has now accorded approval for revising the merit panel as under:

Though the petitioner has submitted letter of indent from Lakshmi Vilas Bank, the scrutiny committee has not awarded any marks since the petitioner has mentioned "NIL" under the head "Amount of Loan" under the Column 14.5 of the application.

However, the investigating officer, on scrutinizing the petitioner's application along with enclosures found that the petitioner has enclosed certificate dated 10.03.2008 from Lakshmi Vilas Bank stating that they are willing to extend loan upto Rs.15 lakhs in case distributorship is allotted to the petitioner. Based on that investigating officer has recommended

awarding 7 marks to the petitioner for the Column No.14.5 of the application. Based on the report of the investigating officer and the recommendation of the nodal officer, Competent Authority has approved to award 7 marks in respect of Column No.14.5. The interview committee did not give any marks to the petitioner under the head "Experience", since the marks awarded for "Experience" are purely based on response of the petitioner to the questions raised during the interview. Accordingly, the revised merit panel has been prepared and kept pending since the entire proceedings of selection of LPG distributorship at Kallakurichi has been stayed by Hon'ble High Court. It is further submitted that even if the petitioner is ranked First consequent upon the award of additional marks to her as aforesaid, it will not automatically entitle her to be awarded the subject distributorship since she has to fulfill the other criteria and requirements of the respondent post selection as per the respondents' policy."

9. According to the learned counsel, this was a clear case of misrepresentation and therefore, her candidature ought to have been rejected in terms of Clause 23 of the Brochure issued by the IOCL and also in terms of the undertaking given by the candidates under Clause No.16 since the third respondent had given an undertaking that the information given in the application was correct and there was no misrepresentation or wrong information. The learned counsel would further contend that as regards second contention is concerned, admittedly, in respect of Clause 14.5 against column "amount of loan", the third respondent had mentioned "nil" and therefore, IOCL had rightly given '0' marks in terms of Clause 16 of the Form, since the marks would be given only on the information given in the application. He would lay emphasize on the fact that the information given in the application for the reason that after the first selection was announced, the third respondent had produced a letter from her banker that the bank was willing to extend loan upto Rs.15 lakhs to her if allotment of LPG was in her favour.

10. The third respondent having failed to mention this fact in the application, the learned counsel for the petitioner would submit that the subsequent letter from the bank of the third respondent raised a doubt as to whether it was given on the date mentioned in the letter or the same was subsequently obtained by the third respondent in order to win the dealership. Learned counsel further would submit that as regards the third contention is concerned, the purported letter issued by the Lakshmi Vilas Bank, dated 10.03.2008, stating that the third respondent would be extended with loan upto Rs.15 lakhs was not issued in the format as provided in Annexure-D to Clause 14.5. Therefore, the third respondent had merely produced a handwritten letter from the bank without the details as provided for in Annexure-D to Clause 14.5. Therefore, the said letter from the bank cannot be considered as the one fulfilling the conditions as laid down in the application as well as in the Brochure issued by the IOCL.

11. According to the learned counsel for the petitioner, the first respondent/IOCL had overlooked all the major discrepancies in the application form submitted by the third respondent and

extended rather unusual helping hand to confer distributorship on the third respondent notwithstanding the fact that the first respondent/IOCL had strongly resisted the claim of the writ petitioner in W.P.No.13550 of 2009. Learned counsel for the petitioner would submit that IOCL had adopted a partisan approach towards securing interest of the third respondent by overlooking the original claim of the petitioner for whatever reasons best known to them. Learned counsel would draw the attention of this Court to the contradictory statements with the facts presented by the third respondent regarding her status. He would submit that initially the third respondent had mentioned in the application form that she had 15 years of work experience, but when it was verified with the certificate submitted by the third respondent stating that she was working as Senior Executive from 2000 onwards, looking after Sales as well as Customer Care, having been employed under one M/s.Shanthi Agencies, which was run by none other than by her own husband and when it was enquired whether any salary paid towards her employment as Marketing Executive, a letter was issued by the husband of the third respondent, stating that she was only

assisting his business and no sort of compensation was paid to her. Not being outdone with the above story, subsequently a certificate was issued by the Chartered Accountant, that the third respondent's income for the Financial Year 2006-07 was Rs.5 lakhs per year as she was a Doctor by profession. From these statements, there were enough and clear discrepancies to demonstrate that the third respondent had not participated in the tender process with clean hands and the award of distributorship to the third respondent was against the very spirit and object of the scheme for grant of distributorship for empowering the women in the country. He would therefore, submit that the petitioner herein being ranked No.1 which fact has not been disputed in the first notification, has to be considered for distributorship in the place of third respondent since the third respondent, having secured the distributorship with the false information, cannot be allowed to continue with the distributorship.

12. On the other hand, the learned counsel appearing for the respondents 1 and 2 would submit that as per the counter

affidavit filed on their behalf, the award of 7 marks under category, "capability to arrange loan" was only a rectification of error at the time of initial evaluation and a detailed order was passed by the Committee, which was entrusted with the task of looking into the complaint of the third respondent dated 20.07.2009.

13. According to the counter affidavit, there was no revaluation of the information obtained from the third respondent and the IOCL did not either receive or accept any documents from the third respondent after publication of results on 19.06.2009 for the purpose of awarding the marks in favour of the third respondent. As regards, the contention raised on behalf of the petitioner that no record of experience and also failing to mention the details in the application form which rendered the third respondent ineligible for consideration and cancellation of any allotment, the entire affidavit seems to be silent on the said crucial aspect. The thrust of counter affidavit filed on behalf of respondents 1 and 2 is only on the aspect that it was only a management error, the third respondent having failed to mention

"loan amount" to be sanctioned by a banker and subsequently, the said mistake had been rectified in favour of the third respondent. He would submit that during the pendency of the earlier writ petition in W.P.No.3550 of 2009, a revised ranking list was published in which, the third respondent herein who was the petitioner therein in the said Writ Petition, was ranked No.1 and was selected for distributorship and on the basis of this subsequent development, the said writ petition came to be disposed of by closing the same vide order dated 14.09.2009.

14. On behalf of the third respondent, Sri R.Thiagarajan, learned senior counsel at the outset would submit that there is no pleading whatsoever alleging that any mala fides against the respondents 1 and 2 by the petitioner. In the absence of mala fides, the rectification of mistake cannot be construed to be a grave error in contravention of the provisions of the Brochure or the conditions as stipulated in the application form. Learned senior counsel would also emphatically submit that the qualification of the third respondent being the medical practitioner, cannot be held against her, as she was given

certificate by one M/s.Shanthi Agencies certifying that she was employed as Senior Executive from 2000 onwards. According to the learned senior counsel, except the marks given under the category "capability of raising loan, the other marks granted to the third respondent were not in dispute. Therefore, the experience of the third respondent is not specific subject matter of the challenge in the earlier writ petition. According to the learned senior counsel, the Expert Committee had evaluated and awarded marks as their assessment and the same cannot be challenged before this Court.

15. According to the learned senior counsel, no marks were granted for the experience and third respondent had not derived any advantage as such, the question of raising this issue in the said writ petition is untenable and cannot be countenanced both in law and on facts. However, unfortunately, learned senior counsel did not address the vital submissions made on behalf of the petitioner that there was misrepresentation on the part of the third respondent which misrepresentation was highlighted by the IOCL in the counter affidavit filed against the third respondent in

W.P.No.13550 of 2009. Although, this Court may agree with the general submissions made by the learned senior counsel that a medical practitioner need not be deprived of being granted distributorship if she was otherwise eligible for the same, yet in the facts and circumstances of the case, it is too much for this Court to believe that a Doctor by profession had taken up employment in an agency as a Marketing Executive that too without any payment. The story of the third respondent also lacks conviction for the simple reason that her income for the year 2006-07 had been stated as Rs.5 lakhs as per the Chartered Accountant's report and the said income was from the medical profession. Although the learned senior counsel appearing for the third respondent has made an elaborate statement stating that all is well with his client, but the facts and circumstance of the case would speak otherwise.

16. As rightly pointed out by the learned counsel for the petitioner that the third respondent not only misrepresented about her experience status but also not given crucial details in the application form particularly as required in Clause 14.5 (D) of the Brochure. A handwritten letter was circulated from her

banker did not disclose the details as provided in Clause 14.5 (D) of the application form. In spite of the pitfalls, this Court does not appreciate as to how the IOCL extended undue latitude to the third respondent for granting distributorship. It is needless to mention that despite the fatal shortcomings on the part of the third respondent, she had managed to extract the leverage with the IOCL by refusing her marks and securing the distributorship in her favour.

17. This Court is entirely convinced of the fact that the third respondent had secured distributorship despite violating the conditions of the Brochure issued by the IOCL and also Clauses provided in the application form. Adding 7 marks from the third respondent by way of revision by taking into consideration a mere handwritten letter issued by the banker of the third respondent cannot be countenanced both in law and on facts since such handwritten letter issued hurriedly by the banker has raised a serious doubt in the mind of this Court as to whether the said letter dated 10.03.2003 was given prior to the submission of the application or it was submitted thereafter. Even otherwise,

giving benefit of doubt to the third respondent, such handwritten letter does not provide the details as provided for in the format as given in the Annexure D to Clause 14.5 of the application. Therefore, it cannot be said that the third respondent has fulfilled all the requirements in terms of the brochure.

18. In any event, the initial misrepresentation of the third respondent that she had work experience which was refuted by the IOCL itself before this Court in the writ petition filed by the third respondent in W.P.No.13550 of 2005 cannot subsequently make 'U' turn and extend the distributorship to the third respondent overlooking their own objections to the representation of the third respondent in that regard. It was a clear case of the misrepresentation on the part of the third respondent and such misrepresentation entails cancellation of the distributorship as per Clause 22 of the Brochure of the IOCL as well as the undertaking given by the third respondent in Clause 17 of the application form and such undertaking was also supported by an affidavit of the third respondent signed by the notary public. It is clear from the entirety of the facts and circumstances that there was noticeable amiss about the conduct

of the IOCL towards towards confirmation of the distributorship in favour of the third respondent, in spite of lack of bona fide on the part of the third respondent in submitting her candidature for consideration of the grant of distributorship.

19. Even though no decisions were cited during the course of arguments, it appears that subsequently, the learned senior counsel for the third respondent, along with the written arguments, had circulated some decisions which were not relied upon during the course of his arguments and since the decisions were circulated behind the back of the petitioner, the same cannot be considered by this Court as no opportunity was given to the petitioner to distinguish the said decisions. Even otherwise, this Court has gone through the judgments and find that the same cannot be applied on the factual matrix of the present case. In view of the basic findings of this Court that the petitioner has made out the case for grant of relief, the citations cannot be of any legal consequences for arriving at any decision either way.

20. In view of the above factual conclusion, this Court has no hesitation in setting aside the impugned empanelled list

insofar as the third respondent is concerned. Since the third respondent was allowed to continue with the distributorship during the pendency of the writ petition, in the view of the above conclusion of this Court, third respondent cannot be allowed to continue any further as it was made clear by this Court while modifying the interim order that her continuity with the distributorship was subject to the result of the writ petition. Therefore, the distributorship granted to the third respondent is hereby set aside. As a consequence of the above finding, the respondents 1 and 2 are directed to consider the claim of the petitioner for grant of distributorship in her favour in the place of the third respondent. The orders in this regard shall be passed by the respondents 1 and 2 within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is allowed on the above terms.
No costs. Consequently, connected MP is closed.

suk

18-01-2018

Index: Yes/No

Internet: Yes/No

To

1. The Deputy General Manager,
Tamil Nadu State LPG Incharge,
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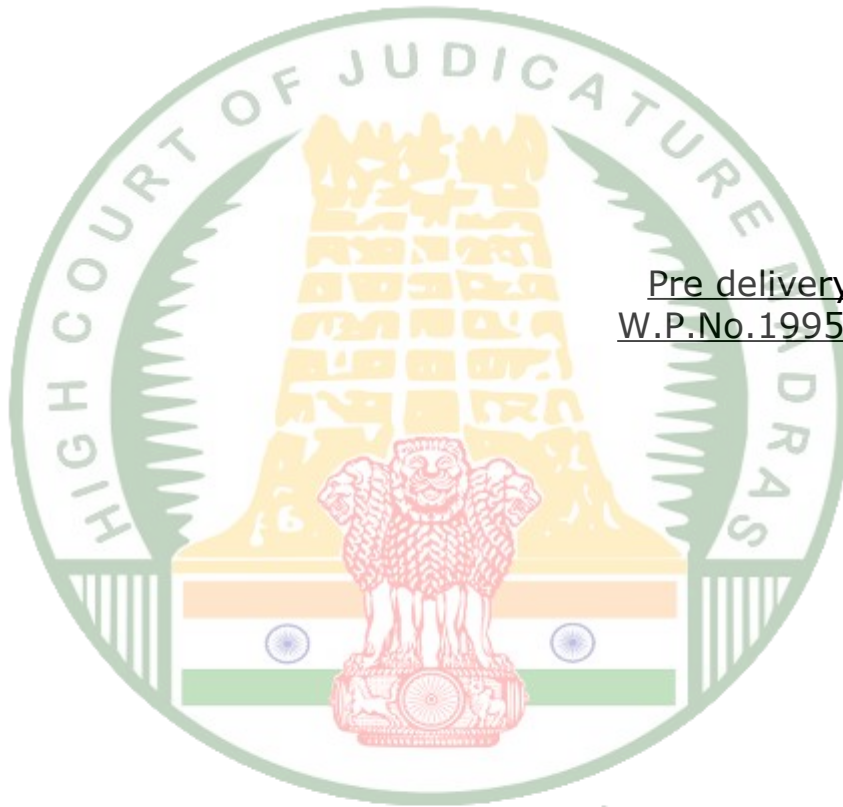
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Pre delivery order in
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